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01-11-2002

U.S. Patent & TMOfo/TM Mail Rcpt Dt. #58

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

U.S. Pharmaceutical Corp.,)	
)	
Petitioner,)	
)	Cancellation No.: _____
v.)	Registration No.: 2,033,253
)	Mark: U.S. PHARMACEUTICALS
)	
U.S. Pharmaceuticals, Inc.,)	
)	
Respondent.)	
_____)	

PETITION FOR CANCELLATION

Petitioner, U.S. Pharmaceutical Corporation, alleges the following for its Petition for Cancellation against Respondent, U.S. Pharmaceuticals, Inc.:

1. Petitioner is a Georgia corporation that places markets, sells, and distributes pharmaceutical products.

2. Beginning at least as early as 1984, Petitioner has used U.S. PHARMACEUTICAL CORPORATION as both a corporate name and as a trademark for its products. Since that time, the name and mark have served as a distinctive indicator of origin for Petitioner's goods.

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3. Prior to July 17, 1993, Petitioner expended considerable sums of money into developing consumer brand recognition for the U.S. PHARMACEUTICAL CORPORATION name and mark.

4. As a result of widespread advertising by Petitioner and promotion of Petitioner's goods, Petitioner's U.S. PHARMACEUTICAL CORPORATION name and mark had acquired a high degree of recognition, fame, and distinctiveness as a symbol of the quality of goods offered

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by Petitioner prior to the date of first use recited in Respondent's registration and prior to the filing date of Respondent's application. The public and retail buyers are familiar with and identify Petitioner's name and mark with Petitioner, and by reason of this identification, goods associated with the name and mark are understood by the public and trade to be produced, marketed, and supplied by Petitioner or otherwise derived from Petitioner.

5. Petitioner's U.S. PHARMACEUTICAL CORPORATION name and mark is an important factor employed by the public in identifying the source of Petitioner's products and is distinctive of Petitioner's products.

6. As a result of Petitioner's extensive sales and promotion of goods sold under its U.S. PHARMACEUTICAL CORPORATION name and mark, the name and mark had become famous and distinctive within the meaning of 15 U.S.C. § 1125(c) prior to the date of first use recited in Respondent's registration, and prior to the filing date of Respondent's application.

7. The services recited in Reg. No. 2,033,253 are closely related to the goods provided by Petitioner in intrastate and interstate commerce prior to Respondent's claimed date of first use and prior to the filing date of Respondent's application.

8. Petitioner is suffering ongoing damage as a result of the registration of Respondent's U.S. PHARMACEUTICALS mark because the mark so resembles Petitioner's U.S. PHARMACEUTICAL CORPORATION name and mark as to be likely to cause consumer confusion, mistake, and deception, particularly in view of the closely related nature of the parties' goods and services. Persons familiar with Petitioner's mark and goods are likely to believe erroneously that Respondent's services are services of Petitioner or are authorized,

licensed, endorsed, or sponsored by Petitioner, and registration of Respondent's mark on the Principal Register is therefore inconsistent with Petitioner's prior rights in its own mark.

9. Petitioner is suffering ongoing damage as a result of the registration of Respondent's U.S. PHARMACEUTICALS mark because the mark dilutes the distinctiveness of Petitioner's U.S. PHARMACEUTICAL CORPORATION name and mark and registration of Respondent's mark on the Principal Register is therefore inconsistent with Petitioner's prior rights in its own name and mark.


10. Because it enjoys prior use of its distinctive name and mark in both intrastate and interstate commerce, Petitioner is therefore entitled to the cancellation of Respondent's registration under 15 U.S.C. §§ 1052 and 1064 (1994).

A duplicate copy of this Petition for Cancellation and the required fee of \$300.00 are enclosed. **The Commissioner is authorized to debit Kilpatrick Stockton LLP's deposit account no. 11-0860 if there is a deficiency in the required fee.**

Petitioner therefore requests the Board to sustain this proceeding in Petitioner's favor and to cancel Registration No. 2,033,253.

Respectfully submitted,

KILPATRICK STOCKTON LLP
1100 Peachtree Street
Suite 2800
Atlanta, Georgia 30309-4530
(404) 815-6500



Theodore H. Davis, Jr.
Christine M. Cason

Attorneys for Petitioner
U.S. Pharmaceutical Corp.

"Express Mail" mailing label number EL900208725 US
Date of Deposit 1/14/02
I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office To Addressee" service under 37 CFR § 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513